

MINNESOTA BUREAU OF MEDIATION SERVICES

ARBITRATION AWARD

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In the Matter of the Arbitration)	
)	
Between)	
)	
LAW ENFORCEMENT LABOR SERVICES)	File 06-PN-0742
)	
and)	JOHN REMINGTON
)	ARBITRATOR
CITY OF MARSHALL)	
)	
)	
_____)	

THE PROCEEDINGS

The above captioned parties, having been unable to resolve an impasse arising out of their inability to agree upon the terms and conditions of a new collective bargaining agreement, selected the undersigned Arbitrator John Remington, pursuant to Section 179A.16 of the Public Employment Relations Act and through the procedures of the Minnesota Bureau of Mediation Services, to hear and decide the matter in a final and binding determination.

Accordingly, a hearing was held on July 26, 2006 in Marshall, Minnesota, at which time both parties were represented and fully heard. The parties presented oral testimony and documentary evidence. No stenographic transcript of the proceeding was taken and the parties

requested the opportunity to file post hearing briefs which they subsequently did file on August 10, 2006.

The following appearances were entered:

FOR THE EMPLOYER:

Cyrus F. Smythe
Mike Johnson

Consultant
City Administrator

FOR THE UNION:

Terry Herberg
Jason Buysse
Jason Kopitsky
Todd Ellis

Business Agent

THE ISSUES

At the time the parties reached an impasse in collective bargaining, they certified the following five (5) issues to the Minnesota Bureau of Mediation services for resolution through interest arbitration: (1) wages for 2006 and 2007; (2) uniform allowance; (3) field training officer compensation; (4) shift differential; and (5) duration of the agreement.

BACKGROUND

Marshall, Minnesota, (hereinafter “EMPLOYER”), is a municipal corporation of the State of Minnesota and a public employer within the meaning of Minn. Stat. §179A. Law Enforcement Labor Service (LELS) Local No. 190 (hereinafter “UNION”) is the duly certified exclusive collective bargaining representative for the seventeen (17) police officers employed by the City as set forth in BMS Case No. 94-PCE-1004. The parties were unable to agree on the terms of a new collective bargaining agreement as noted above and submitted their dispute to the

Bureau of Mediation Services for interest arbitration on March 27, 2006. The final positions of the parties were submitted to BMS in April of 2006.

DISCUSSION, OPINION AND AWARD

ISSUE #1: WAGE RATES FOR 2006-2007

The Union requests a 4% general salary increase for 2006 and an additional 4% for 2007 if the Arbitrator determines to grant any increase for 2007. In this latter connection the Union contends that there is insufficient external or internal data upon which to base an award for 2007 and notes that the City is currently engaged in a Comparable Worth Study that will be completed late in 2006. The Employer offers a wage increase consistent with those already established for other City employees and consistent with the criteria specified by the State pay equity statute. Accordingly, the City proposes that a 3% increase for 2006 followed by an additional 3% increase in 2007 is both internally consistent and in keeping with the pattern of negotiations established by the parties over the past twelve years.

The Arbitrator has considered the following four factors in evaluating the parties' respective proposals: 1) the Employer's ability to pay; 2) Internal market comparisons; 3) External market comparisons; and 4) Economic factors.

1. Employer's Ability to Pay

There is substantial evidence within the record to conclude that the Employer has the ability to pay the 4% increase requested by the Union. As demonstrated by the Union, the City had assets in 2004 substantially in excess of its liabilities; an unreserved fund balance that falls into the "High Fund Balance" category as determined by the State Auditor; a substantial balance in Cash and Investments at the end of 2004; and a Police Department that finished 2004 nearly

\$80,000 under budget. Moreover, the City kept the 2006 local tax rate the same as in 2005 while reducing the total levy by 7.8%. There can be little doubt that the 1% difference between the Union's request and the City's offer can be easily accommodated without financial strain.

2. Internal Market Comparisons

Internal market comparisons are clearly the single most important factor in determining wage increases through interest arbitration. Compensation for positions within an employer's work force must bear a reasonable relationship among related job classes and among various levels within the same occupational group. M.S.A. §471.993, subd. 1(3). Internal consistency with other bargaining units in the same jurisdiction must be generally afforded greater weight than external comparisons. However, despite the Employer's contentions to the contrary, there does not appear to be a clear pattern of identical settlements between police officers, police supervisors (also LELS represented) and general employees (AFSCME represented), particularly in the past five years. While it is true that police officers, police supervisors and general employees received identical increases from 1994, the year in which police officers in the City were first represented by LELS, through 2000, the Union did not begin to represent police supervisors until 1998 and AFSCME did not commence its representation of general employees until 1999. Accordingly, it was relatively easy in most of those years for the City to unilaterally apply the same increase negotiated by Local 190 to police supervisors and other employees. The above pattern was broken in 2001 when police officers and supervisors obtained a substantially larger settlement (+1.5%) than was negotiated by AFSCME for general employees or granted to non-union employees of the City. The same was true in 2002 when the police unions again obtained a larger increase than the general and non-union employees. While the 2003 increases were identical across all bargaining units, settlements in 2004 and 2005 again departed from the

old pattern of identical increases for all units as the police officers and supervisors negotiated larger wage settlements than those negotiated by AFSCME or granted to non-union employees.

The data cited above clearly demonstrates that although there may have been an historical pattern of internal consistency in wage increases for all City employees in the 1990's, it is apparent that this pattern was broken by collective bargaining and not re-established after 2000. Indeed, if there is an internal "pattern" after 2000, it is one of granting larger increases to police personnel than to other employees. In support of its position the Employer argues that the apparent deviations from the wage pattern noted above were the result of the City voluntarily offering to adjust compensation based on its own comprehensive compensation plan. Indeed, the Employer maintains that the higher percentage wage increases received by police officers in 2001, 2002, 2004 and 2005 were not "demanded by the Union." Rather, the City asserts that these increases were "voluntarily offered to the Union by the City based on the City's assessed need to bring the police officer group closer to the compensation level indicated as appropriate under the City's comprehensive compensation study." However, the City presented no testimony or other evidence to support this claim of voluntary unilateral wage increases. Even assuming, for the sake of argument, that the City's wage offers actually exceeded the Union's requests, the Union nonetheless accepted these offers in the context of collective bargaining. Accordingly, these wage settlements can only be deemed negotiated and not unilaterally determined by the Employer.

Finally, it is noted that the Employer will continue to be in compliance with the Local Government Pay Equity Act even if the Union's request is granted.

3. External Market Comparison

Given the above finding that there has been no internal pattern of identical wage increases to the different bargaining units within the City in recent years, external market comparisons assume greater significance in the Arbitrator's evaluation of the parties' positions. This is particularly true when the employees in question are a balanced class as is the case here. There is no dispute that the appropriate comparison group for the Employer is a group of thirteen (13) southern Minnesota cities.¹ Ranking this group by population reveals that Marshall is number eight of thirteen. In 1993, police officer pay in Marshall was .07% above the average and ranked 7 of 13 in this group. By 2005, Marshall's police officer pay had fallen to 1.4% below average and ranked 9 of 13 in the group. Under the Employer's 3% proposal, Marshall would fall to 11 of 13 in the group. Even the 4% increase requested by the Union will leave Marshall in the lower half. This data clearly reveals that salaries for Marshall police officers have deteriorated slightly over the past few years in comparison with the other cities in the group.

4. Economic Factors

There has been a general rise in the cost of living in the non-metropolitan Midwest as measured by the Consumer Price Index. The percentage increase according to data presented by the Union was 4.3% in 2005 and 4.5% as of June 2006. The parties presented no other data regarding the specific economic circumstances of Southwest Minnesota. While the Arbitrator is disinclined to rely heavily on the Consumer Price Index given its limited applicability to smaller cities and towns because of regional differences in the economy, it is true that the CPI data lends greater support to the Union's request than to the offer of the City.

¹ These cities include Albert Lea, Fairmont, Faribault, Hutchinson, Marshall, New Ulm, Northfield, North Mankato, Owatonna, St. Peter, Waseca, Willmar and Worthington.

AWARD

Based on his evaluation of the above four factors, the Arbitrator has determined that the 4% wage increase requested by the Union for 2006 is supported by the evidence presented at the hearing and is hereby awarded.

ISSUE #2: UNIFORM ALLOWANCE

The Union seeks to change the provision system included in the current collective agreement with language that would permit employees to draw up to \$500 per year to purchase uniform items. The Union also requests an increase in the current footwear allowance from \$120/year per employee to \$150/year. The Employer opposes both of these proposed changes and asks that the current language be retained. The uniform provision system has been in place for many years. The Union contends that the provision system “has not worked” and offered the testimony of Police Officer Jason Kopitsky. Kopitsky testified that he has experienced significant difficulty in trying to obtain a suitable uniform jacket and that he has repeatedly been told to “make do” for budgetary or other reasons. While Kopitsky’s testimony was apparently credible, there was no other evidence presented by the Union to show the ineffectiveness of the current system. Indeed, as the Employer noted, there have been no grievances or written complaints filed by the Union suggesting that the provision system is inadequate. Accordingly, the Arbitrator is reluctant to abandon a longstanding provision of the agreement based on what may be a single isolated incident. The evidence presented by the Union is simply insufficient to justify the proposed change. Neither did the Union establish the inadequacy of the current \$120 shoe allowance. While it did point to an internal comparison with the AFSCME contract that provides a \$150 shoe allowance, the Employer argued that this difference is justified by the fact

that public works employees are required to wear OSHA approved footwear with steel-toe shoes while police officers may wear any style of black shoe or boot.

AWARD

The Union was unable to demonstrate a need to change the current contractual provision concerning Uniform provision and Footwear allowance. The position of the Employer that no change be made to the contract is therefore awarded.

ISSUE #3: FIELD TRAINING OFFICER

The Union seeks a new provision in the collective agreement that would compensate police officers assigned as Field Training Officer (FTO) an additional two dollars (\$2) per hour while performing field training duties. The Employer opposes the proposed new language. The Union's case for the proposed change was based primarily on the testimony of Officer Jason Byssse who has served successfully as a Field Training Officer. However, the burden of showing a need to change is substantial in interest arbitration and Byssse's testimony alone was not sufficient to carry that burden. While it is undisputed that the responsibilities of the job are substantial and the role is a critical one in any police department, there are many assignments within a police department that do not carry extra pay. The Union provided no justification or basis for establishing a \$2/hour premium. Further, the City contested the accuracy of the comparative data presented by the Union. While there may be sufficient justification to establish an FTO premium payment in Marshall, the Union did not present it here.

AWARD

The Union was unable to establish a compelling need to change. The position of the Employer is therefore awarded.

ISSUE #4: SHIFT DIFFERENTIAL

The Union seeks an increase of \$.20 per hour in the current shift differential. Under its proposal the shift differential would increase from \$.15/hour to \$.35/hour. The Employer contends that the proposed increase is unwarranted. The Union maintains that the proposed increase in the shift differential is justified by external comparisons. While it is true that some of the cities in the above noted comparison group have shift differentials higher than that paid in Marshall, five of the comparison group cities have no shift differential provision at all. The data presented by the Union does not clearly establish a justification for the increase and that data was strongly challenged by the Employer. While an adjustment in the shift differential may be warranted, the Union was unable to carry its burden of justifying so substantial an increase.

AWARD

The Employer's position that the shift differential should continue unchanged for 2006 is hereby awarded.

ISSUE #6: DURATION

The Union seeks a one-year agreement (2006 only). The Employer requests a two-year agreement (2006 and 2007). While it is true that the resolution of this matter through interest arbitration in September of 2006 will require the parties to soon commence negotiations for 2007, the inefficiency of a one-year award is justified by the fact that only one other employee group (AFSCME) has a contract for 2007 and many of the police contracts in comparison cities remain unsettled. However, the most compelling reason for one-year contract is the fact that the City's outside comparable worth study should be completed prior to negotiations thereby providing the parties with relevant data for collective bargaining.

AWARD

The Union's request for a one-year agreement for 2006 only is hereby awarded.

John Remington, Arbitrator

September 8, 2006

St. Paul, MN